92-188

Supreme Court, U.S.
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OFFICE OF THE CLERK

NO._____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

CELINA M. CLAY,

PETITIONER

v.

BARRINGTON MOTOR SALES, INC.

RONALD BRANSKY, ET AL.

RESPONDENT.

# PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

# PETITION FOR WRIT OF CERTIORARI

CELINA M. CLAY, PRO SE
P.O. Box 40103
NASHVILLE, TENNESSEE 37204

## QUESTIONS PRESENTED

1. Whether the State of Tennessee, through the Supreme Court of Tennessee denied your Petitioner inalienable rights guaranteed under the Fifth, Ninth and Fourteenth Amendments and Article IV Sections 1 & 2(1)?

2. Whether the State of Tennessee through the Supreme Court of Tennessee sanctioned plain errors of the lower court, which conflict with the controlling decisions of the United States Court of Appeals for the Sixth Circuit, State and other applicable law?

3. Whether the State of Tennessee through the Supreme Court of Tennessee sanctioned Respondent's willful contempt of court and voided admissions of breach and fraud and whether this constitute's justification of this Court to exercise it's power of supervision?

4. Whether this suit based on well established law, legal principles, controlling statutes and precedents can constitute a frivolous suit?

5. Whether the sanctions, costs and money judgment assessed by the lower court against your Petitioner is contrary to equity and justice and should be reversed?

6. Whether this case appealed from General Sessions Court to Chancery Court is res judicata if Tennessee law T.C.A. §§ 16-408,-450 (Supp. 1977) provide that "a case appealed to the wrong court shall be transferred to the proper court?"

## THE PARTIES

In the General Sessions Court of Davidson County, Tennessee, the Chancery Court Part III, the Court of Appeals for the Middle Section at Nashville, and the Supreme Court of Tennessee, the parties were Barrington Motor Sales, Inc., et al, who is Plaintiff, Defendant, Appellee, Respondent and Celina M. Clay who is Defendant, Plaintiff, Appellant and Petitioner herein respectively.

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No._____

IN THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1992

STATE OF TENNESSEE,

CELINA M. CLAY,

. PETITIONER,

V.

BARRINGTON MOTOR SALES, INC., et al.,

RESPONDENT

---

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF TENNESSEE

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## OPINIONS AND ORDERS BELOW

The Order On Petition To Rehear, issued on June 15, 1992 by the Supreme Court of Tennessee, denying the Petitioner s motion seeking an order to

stay or recall the mandate and petition to rehear is submitted as Appendix "A" to this petition.

The opinion issued January 17, 1992 and order issued January 29, 1992 by the Court of Appeals for the Middle Section at Nashville denying Your Petitioner's petition to rehear is attached as Appendix "B" to this petition.

The Judgment issued May 28, 1991 dismissing your Petitioner's case and assessing court costs to the plaintiff-petitioner and order issued June 24, 1991 awarding a judgment against the plaintiff-petitioner is attached as Appendix "C" to this petition.

The Order for a leave to amend the complaint to an additional $20,000.00 granted January 29, 1991 is attached as Appendix "D" to this petition.

Order entered December 4, 1991 as Appendix "E".

## JURISDICTION

The order of the Supreme Court of Tennessee was issued on June 15, 1992 and this petition is filed within sixty (60) days of said date. This Honorable Court's Jurisdiction is invoked under U.S.C. III (1) and (2); 28 § 1257 (3) and Rule 10 .1.

## CONSTITUTIONAL PROVISIONS INVOLVED

Your Petitioner is making a claim under the Fifth, Ninth, and Fourteenth Amendments; and Article IV Sections (1) & (2). Said constitutional provisions read in pertinent part:

Fifth Amendment

"No person shall ...be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;..."

Ninth Amendment

"The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Fourteenth Amendment

Section 1

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

ARTICLE IV

Section 1

"Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State..."

Section 2 (1)

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

## STATUTORY PROVISIONS INVOLVED

42 U.S.C. 1983 provide that:

"Every person who, under color or any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,

subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia."

Other statutes in pertinent part provide:

T.C.A. §§ 16-408,-450 (Supp. 1977):

"A case appealed to the wrong court shall be transferred to the proper court."

Uniform Commercial Code § 2-313 and T.C.A. 47-2-313:

"Express Warranties by Affirmation, Promise, Description, Sample. (1) Express warranties by the seller are created as follows: (a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

T.C.A. 19-1-118:

"Trial de novo on appeal-Decision on merits. No civil case, originating in a general sessions court and carried to a higher court, shall be dismissed by such court for any informality whatever, but shall be tried on its merits; and the court shall allow all amendments in the form of action, the parties thereto, or the statement of the cause of action, necessary to reach the merits, upon such terms as may be deemed just and proper; and the trial shall be de novo. [ Code 1858,§4177 (deriv. Acts 1851-1852, ch 100, §2); Shan., §5989; mod.Code 1932, §10190; impl. am. Acts 1979, ch 68, §§2,3; T.C.A.(orig.ed.), §19-425.] "

T.C.A. 47-18-101 et.seq.:

47-18-104 Unfair or deceptive acts prohibited. (a) Unfair or deceptive acts or practices affecting the conduct of any trade or commerce are hereby declared unlawful. (7) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another."

and § 2-513 and § 2-715; 77 C.J.S. Sales, §19 et. seq. and § 71 (d); T.C.A 47-2-607 et. seq.

## STATEMENT OF THE CASE

Respondent obtained a Writ of Possession from the General Sessions Court in Tennessee on November 13, 1990 and a Bond for $25,600.00 from Sullivan Bonding Company allowing possession of said vehicle. The trial was set for November 26, 1990 and continued from that date to December 4, 1990 at which time Petitioner countersued for breach of contract, breach of express warranty, and fraud. The General Sessions Court granted Respondent legal possession, subject to the jurisdiction of the court. The court dismissed Petitioners' countersuit. Petitioner filed an Appeal, Complaint and Application for Injunctive Relief of the General Sessions Court decision on December 12, 1991 to the Chancery Court. The Petitioner's appeal was perfected under the filing of the pauper's oath.

Petitioner was granted a leave to amend the complaint. Petitioner filed a motion for

production and a restraining order. Respondent filed a motion to set for trial. The Court ruled that Petitioners' motion for production is to be worked out between counsels and the restraining order failed to show irreparable harm and was denied. Respondents' motion to set was set for 9:00 a.m. on May 21, 1991. Petitioner filed a motion for Summary Judgment, motion for a continuance and enforcement of the appropriate Tennessee court jurisdiction of the vehicle to be heard by the Court on May 17, 1991 at 9:00 a.m. The Court denied Petitioner's motions.

The case was tried de novo, May 21, 1991 by a Chancellor. The Chancellor dismissed both suits and charged total court costs to your Petitioner. Petitioner motioned for a new trial on plain error as cause. The Respondent motioned for sanctions and restraining order against the Petitioner under Rule 11. The trial court overruled Petitioner's motion, and charged $2,000.00

sanctions against your Petitioner to which the Petitioner excepted, and appealed, on plain error, to the Middle Section Court of Appeals of Tennessee at Nashville. The appeal was denied and subsequent motions to rehear and for a stay of the mandate were also denied. Petitioner is in compliance with orders as required by law.

## STATEMENT OF THE FACTS

### I.

### ON THE TRIAL.

Your Petitioner appealed to this Honorable Court and assigned plain errors of the trial court based on the legal issues and principles as follows:

The written contract (trial exhibit 4) dated July 17, 1990, specifies the installation of a 2.8 Kohler generator. The respondent admitted breach of express warranty by failing to install the generator the written contract specifies as follows:

Q: Did you put a 2.8 generator in the vehicle?

A: I put a 2.5 in it. (R.pp. 129)

The defendant installed a smaller generator. The rule under Ray v. Thomas[1] and other similar cases is that "Acceptance of an offer must exactly and precisely accord with the terms of the offer." The stature which governs this is the Uniform Commercial Code § 2-313; T.C.A. 47-2-313 and T.C.A. 47-18-101 et seq.

Respondent wrote an ambiguous contract. This is governed by 77 C.J.S. § 71 (d) as follows:

Q: Did you write on the contract the size of the motor home?

A: No (R.pp.134, 135).

The rule under Patterson v. Anderson Motor Co.[2] is that "Any doubt or ambiguity in sale contract would have to be resolved against sellers, whose lawyer had drafted contract." and Standard

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[1] Ray v. Thomas, 232 S.W. 2d 32. (1950); Petway v. Loew's Nashville & Knoxville Corp., 117 S.W. 2d. (1962); Canton Cotton Mills v. Bowman Overall Co., 257 S.W. 398. (1924)

[2] Patterson v. Anderson, 319 S.W. 2d 492. (1959)

Oil Co., v. Petroleum Products Storage Co.[3] that "Contract prepared by the seller will be construed most strongly against it."

The Court erred in applying Illinois law to this contract as follows:

THE COURT: Ms. Clay, the Tennessee Consumer Protection Act doesn't govern this transaction. This is an Illinois transaction. (R.p 129)

The respondent admit to mailing the contract from Illinois to Tennessee for your Petitioner to sign making the contract a Tennessee contract (R p. 129). The rule under Agricultural Services, Inc. v. Ferry Morse Seed Co.,[4] is that "As to any wrong suffered by consumer, Tennessee adhered to place of wrong, namely Tennessee where defective seed was delivered, distributed, and planted, and law of Tennessee governed os to

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[3] Standard Oil Co., v. Petroleum Products Storage Co. 44 S.W. 2d 317, (1931).

[4] Agricultural Services, Inc. v. Ferry Morse Seed Co., 551 F2 1057, (1977)

rights of consumer." and under Midland Linseed Products Co. v. Warren Bros. Co.,[5] that a "Contract signed by seller in Minnesota and sent to its agent presenting it to buyer for signature in Tennessee was Tennessee contract. In this case the seller from Illinois prepared and mailed the contract to Tennessee for Petitioner to sign making it a Tennessee contract.

Respondent was illegally advised not to obey a duly served and accepted Subpoena as follows :

Q: You were subpoenaed to bring some items with you including the generator. Were you able to bring the Trans Van and generator?

A. Bring the Trans Van and generator?

Q: Yes. You were subpoenaed to bring those items with you. Were you able to do that?

A. No. Mr. Collins told me I didn't have to bring the Trans Van or the generator. (R.pp 126-127)

The Court erred in failing to allow Petitioners' motion to amend the complaint to

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[5] Midland Linseed Products Co. v. Warren Bros Co., 46 F2d 870, (1925)

conform to the evidence pursuant to Rule 15.02 T.R.C.P. by adding the Tennessee Consumer Protection Act (R.p6). The Court replied:

" Well, I think an attempt to amend the complaint to add a new cause of action on the morning of the trial is not timely, so I'll overall your motion: (R.p6)

This is a plain error. Rule 15.02 T.R.C.P. reads in pertinent part:

"...Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment;..."

The Court erred as follows:

"The defendant offered to return the down payment and retake the vehicle, but the plaintiff did not respond." (Court's Memorandum).

The Respondent never made this offer and this statement is not supported by the facts or trial testimony. The respondent admit that he never spoke or wrote to the Petitioner regarding the

return of the down payment or to retake the vehicle (R.p139).

Respondent testified to oral testimony (R.p. 121) to which the Petitioner objected as follows:

Ms. Clay: Objection. Oral testimony
THE COURT: What's that?
Ms. Clay: Oral testimony is inadmissible to contradict the written contract.
THE COURT: I overrule the objection for the reasons I've already stated. Your whole case is based on oral testimony that contradicts the contract.(R.pp 121, 122)

This is a plain error. Petitioners' suit is based on a written contract (T.E. 4), witness testimony of record and documented evidence (T. E. 7) all of which proved breach and fraud and was never denied by Respondent.

On the trial of the case, the facts recited above were proven by your Petitioner. (R. pp.6, 14, 15, 16, 35, 36, 121, 122, 129, 134, 135).

II.

JUDGMENT AND MEMORANDUM

The Chancellor's judgment that this case had already been tried by another court and "is barred by the doctrine of res judicata" conflicts with T.C.A. 19-1-118 and T.C.A. §§ 16-408,-450 (Supp. 1977). The appeal of the General Sessions Court decision was filed within ten days of judgment and perfected under the pauper's oath cost bond as was pointed out by the Court (R. p. 131) for the reasons stated including time being of essence to retain appellate rights (R. pp. 146, 147, 153). Petitioner is in compliance with the payment of the cost bond for the appeal and judgment. The case was never transferred to another court. Both the Petitioner and the Respondent went to trial in Chancery Court based on merits. The Chancellor erred in not applying the forementioned law.

The Order entered June 24, 1991 assessing a judgment against your Petitioner in the amount of $2,000.00 is inconsistent with equity, justice and the Tennessee Rules of Court, Rule 11 and should be reversed. Aditionally, Respondent's alleged evidence for sanctions did not support the motion. Petitioners' suit is based on well established law, legal principles and sworn testimony including a witness (R.pp14, 15 16). The Judgment dismissing Petitioners' suit is contrary to the law and legal principles as cited above.

The State of Tennessee through the Supreme Court of Tennessee sanctioned the Court's plain errors by failing to rehear the case or rule based on the merits, facts, evidence, testimony and applicable law.

## SUMMARY OF ARGUMENT

1. The policy of refunding a good-faith downpayment for breach of express warranty

and fraud is well established under the rule Keely v. Turbeville[6] that "Fraud. If representations are made by the seller at the time of purchase, which the buyer relied on and was thereby induced to make the trade, and these representations were false, and known to be so by the seller, this would be fraud, and would defeat a recovery upon a note for the purchase; and Warranty. If the buyer relies upon an examination and test of the articles sold, but mainly upon the representations of the seller, and these representations were with intent they should be relied upon, it is a warranty upon which he may recover." In accord with that policy, courts have ruled consistent with this policy: Huddleston v. Lee[7] that "Under the Uniform Sales Act, any affirmation of fact by a seller inducing sale and any promise by him which has that effect is an express warranty, and a warranty based on such

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[6] Keely v. Turbeville, 79 Tenn 339 (1883)
[7] Huddleston v. Lee, 284 S.W. 2d 705, (1955).

an affirmation is a tort obligation, not a contract obligation (Williams' Code, sec. 7205). 39 T.A.-30."

## ARGUMENT

### I.

IN RE: THE CONSTITUTION PROHIBITS ANY STATE OR AGENCY THEREOF FROM DENYING CERTAIN INALIENABLE RIGHTS OF THE CITIZENS.

REASON FOR GRANTING THE WRIT: CONFLICT WITH CONSTITUTIONAL RIGHTS.

In this case, the State of Tennessee through the Supreme Court of Tennessee violated one of the most basic policies: that citizens have a right to due process of law under the Fifth Amendment which includes having a fair trial and having laws administered fairly; that certain inalienable rights not enumerated in the Constitution are retained by the citizens under the Ninth Amendment; and that the Fourteenth Amendment prevents States or any

agency thereof from denying anyone "equal protection of the laws." The reason for this policy are well known and stated in the Constitution and under Article IV SECTIONS 1 & 2 (1).

II

IN RE: THE STATE OF TENNESSEE THROUGH THE SUPREME COURT OF TENNESSEE SANCTIONED PLAIN ERRORS OF THE LOWER COURT.

REASON FOR GRANTING THE WRIT: CONFLICT WITH THE CONTROLLING DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

The Respondent admitted breach and fraud was proven through witness testimony in the record that was never denied by the Respondent. The judgment in this case conflicts with Midland Linseed Products Co. v. Warren Bros. Co., 45 F2d 870, (1950) and Agricultural Services Association, Inc. v. Ferry Morse Seed Co., 551 F.2 1057, (1977).

III.

IN RE: THE SUPREME COURT OF TENNESSEE SANCTIONED A WILLFUL CONTEMPT OF COURT AND VOIDED ADMISSIONS AND TESTIMONY WHICH SUPPORTED RESPONDENTS' CLAIM.

REASON FOR GRANTING SUIT: SANCTIONING OF A LOWER COURT THAT SO FAR DEPARTS FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

Your Petitioners' suit is supported by a written contract, sworn testimony including that of a witness and admissions of the Respondent. A judgment against the Petitioner in this case is contrary to equity and justice and departs from the accepted and usual course of judicial proceedings.

IV

IN RE: A SUIT BASED ON WELL ESTABLISHED LAW AND LEGAL PRINCIPLES CANNOT BE FRIVOLOUS.

REASON FOR GRANTING THE WRIT: THE JUDGMENT CONFLICTS WITH CONTROLLING DECISIONS BY THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, LAW AND EQUITY.

The Supreme Court of Tennessee is in conflict with the aforementioned law and cases cited including : Agricultural Services Assoc. Inc., v. Ferry Morse Seed Co., 51 F 2d 1057, (1977); Midland Linseed Products Co. v. Warren Bros. Co., 46 F 2d 870, (1925); Standard Stevedoring Co. Inc. v. Jaffe, 302 S.W. 2d 829, (1956); E.I.DuPont De Nemours & Co. v. E.L. Bruce Co., 124 S.W. 2d 243, (1939); U.C.C. § 2-313 and T.C.A. 47-18-101 et. seq.

V.

IN RE: THE JUDGMENT, SANCTIONS AND COSTS ASSESSED IS CONTRARY TO EQUITY AND JUSTICE.

REASON FOR GRANTING WRIT: THE JUDGMENT, SANCTIONS AND COSTS ASSESSED CONFLICTS WITH OTHER SIMILAR CASES FROM THE STATE OF TENNESSEE, SEVERAL STATES AND CONTROLLING DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND APPLICABLE LAW.

In this trial de novo suit, the respondent admit to breach and fraud was proven through sworn witness testimony which was never denied by Respondent. The rule is that when a case is absolutely proven without a doubt the plaintiff prevails. The Chancellors' judgment, sanctions and costs is in direct conflict with controlling decisions of the United States Court of Appeals for the Sixth Circuit, other cases from the State of Tennessee and the several States as have been previously explicated. The judgment, costs and sanctions against your Petitioner is totally inappropriate and contrary to equity and justice.

VI.

IN RE: WHETHER THIS CASE APPEALED FROM GENERAL SESSIONS COURT TO CHANCERY COURT IS RES JUDICATA.

REASON FOR GRANTING WRIT: CONFLICT WITH T.C.A. §§ 16-408,-450 (SUPP. 1977) WHICH PROVIDE THAT A CASE APPEALED TO THE WRONG COURT SHALL BE TRANSFERRED TO THE PROPER COURT.

This case was appealed from General Sessions Court to Chancery Court with a Leave to Amend granted by the Chancery Court Chancellor. T.C.A. §§ 16-408,-450 (SUPP. 1977 provide that "a case appealed to the wrong court shall be transferred to the proper court." The case was never transferred to another court and was tried on May 21, 1991 in Chancery Court.

## CONCLUSION

In conclusion your Petitioner, respectfully submits that the State of Tennessee through the Supreme Court of Tennessee decided this case in a manner which conflicts sharply with the usual course of judicial proceedings and teachings of this Honorable Court, the United States Court of Appeals for the Sixth Circuit and other similar cases from Tennessee and the several States and in a manner that is patently contrary to equity and justice.

Therefore, Your Petitioner prays that this Honorable Court will issue the writ of certiorari and will review the matters complained of and reverse the decisions and opinion of the said Appellate Courts of Tennessee.

Respectfully submitted,

Celina M. Clay, Pro Se
P.O. Box 40103
2408 Vaulx Lane
Nashville, Tennessee 37204

# APPENDIX

APPENDIX A

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

IN THE MATTER OF:
CELINA M. CLAY,

Plaintiff-Appellant,

v.

BARRINGTON MOTOR SALES, INC.,
RONALD BRANSKY, OWNER,
Defendant-Appellee.

C.A. No. 01A01-9110-CH-00375 DAVIDSON CHANCERY

ORDER ON PETITION TO REHEAR

On May 11, 1992, this Court denied Appellant's Application for Permission to Appeal. On May 13, 1992, the Appellant filed in this Court a Petition to Rehear. On the same date Appellant also filed a motion seeking an order of stay or

recall of mandate. Upon consideration of the petition to rehear the Court is of the opinion that it is not well taken and shall accordingly be denied. The motion seeking a stay or recall of mandate having been considered is also denied.

Enter this 15th day of June 1992.

PER CURIAM

APPENDIX B

IN THE MATTER OF:

CELINA M. CLAY,

Plaintiff-Appellant,

v.
BARRINGTON MOTOR SALES, INC.,
RONALD BRANSKY, OWNER,

Defendant-Appellee.

Davidson Chancery No. 90-3906-III

Appeal No. 01-A-01-9110-CH-00375

OPINION

The plaintiff, Celina M. Clay, has appealed from the judgment of the Trial Court dismissing her suit against the defendants, Barrington Motor Sales, Inc., and Ronald Bransky, Owner. The judgment also dismissed the counterclaim of defendants and awarded judgment in favor of defendants and against plaintiff for $2,000.00 for

fees and expenses pursuant to T.R.C.P. Rule 11 for bringing a frivolous suit.

On appeal, the plaintiff presents four issues, all but one of which relate to the merits of her claim against defendants arising out of her purchase from Barrington Motor Sales, Inc., of a 1988 Champion Van No. 2GBGG31K0J4106422 on July 17, 1990. However, the judgment in the Trial Court was based upon res judicata (prior judgment); and, if the judgment is correct, these issues raised by plaintiff are immaterial.

Records of the Metropolitan General Sessions Court of Davidson County, duly proven at trial of this cause in the Trial Court, reflect the following:

On November 13, 1990, Barrington Motor Sales, Inc., instituted in said General Sessions Court by issuance of an "Immediate Possession Warrant", naming Celina M. Clay as defendant, and seeking possession of the above described van.

On December 4, 1990, Celina M. Clay caused to be issued by said General Sessions Court a "civil warrant", wherein she stated a claim against "Barrington Motor Sales, Ron Bransky, Owner" for:

> Money retained by Defendant for the amount of $5,500.00 of which $3,600.00 was paid in good faith for an alleged motor home in "like new" condition in which Defendant enduced (sic) Plaintiff to buy, grossly misrepresented the facts and breached expressed warranties.

On December 4, 1990, the General Sessions Judge rendered judgments dismissing the Civil Warrant and awarding possession to Barrington Motor Sales, Inc., on the Warrant for Possession.

There was no appeal from either judgment to the Circuit Court as required by statute.

On December 11, 1990, plaintiff filed the present action in Chancery Court in the form of a document entitled: "Appeal, Complaint and Application for Injunctive Relief". The document described the purchase of the above described van,

the suit for possession of the van and the countersuit for damages, and the desposition of same, and prayed:

b. That this Honorable Court maintain jurisdiction over the 1988 Chevrolet Champion Van until this matter is resolved.

c. That the Court restrain Mr. Ronald Bransky from selling or otherwise tampering with the vehicle until the resolution of this matter is settled.

d. If a resolution of this matter cannot be reached, then this Court allow and order a $5,500 judgment against Mr. Bransky's $25,600.00 Bond.

Appeals from a General Sessions judgment are to the Circuit Court, not the Chancery Court. T.C.A. §27-5-101.

Appeal to the Circuit Court is perfected by bond for prosecution of the appeal or taking the oath for poor persons. T.C.A. § 27-5-103.

There is no evidence of the filing of an appeal bond or oath. The Clerk of the General

Sessions Court testified that due search of the records failed to reveal such.

The controversy presented to the Chancery Court in the present case is unquestionably the controversy which was finally determined by the General Sessions Court without appeal therefrom.

A final judgment in General Sessions Court bars a subsequent suit in another court on the same subject. Staggs v. Vaugn, 205 Tenn. 9, 325 S.W.2d 277 (1959).

Res judicata bars a second suit between the same parties and their privies on the same cause of action as to all issues which were or could have been litigated in the former suit. Harrison v. Bloomfield Building Industries, Inc., (6th Cir. 1970, applying Tennessee Law), 435 F.2d 1192.

The remaining issue presented by plaintiff is the correctness of the $2,000.00 judgment rendered against her for a frivolous lawsuit as

provided by T.R.C.P. Rule 11. The only argument found in support of this issue is as follows:

> Whereas, the trial court's judgment of $2,000.00 sanctions against the plaintiff is based on harmful, fundamental and prejudicial errors and should be reversed.

No merit is found in the issue or argument relating to sanctions. As stated in the judgment of the Trial Court:

> The defendant has moved pursuant to Rule 11, T.R.C.P. for reasonable expenses. Rule 11 was violated. This is a frivolous abusive suit. The case had already been tried in another court. The case had no validity on the merits....

Pursuant to T.C.A. §27-1-122, this appeal is found to be a frivolous appeal. Upon remand, the Trial Court will ascertain and render judgment against plaintiff for damages as authorized by said statute.

The judgment of the Trial Court is affirmed. Costs of this appeal are taxed against the plaintiff. The cause is remanded to the Trial Court for further proceedings.

Affirmed and Remanded.

HENRY F. TODD, PRESIDING JUDGE

CONCUR:

SAMUEL L. LEWIS, JUDGE

BEN H. CANTTTRELL, JUDGE

APPENDIX C

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE 20th JUDICIAL DISTRICT, DAVIDSON COUNTY, PART THREE

IN THE MATTER OF:

CELINA M. CLAY,

Plaintiff-Appellant,

v.
BARRINGTON MOTOR SALES, INC.,
RONALD BRANSKY, OWNER,

Defendant-Appellee.

No. 90-3906-III

JUDGMENT

For the reasons stated in the Court's Memorandum, the complaint and countercomplaint are dismissed. Costs are taxed to the Plaintiff.

ROBERT S. BRANDT

CHANCELLOR

May 28, 1991

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE 20th JUDICIAL DISTRICT, DAVIDSON COUNTY,

PART THREE

CELINA M. CLAY,

Plaintiff-Appellant,

v.

BARRINGTON MOTOR SALES, INC.,
RONALD BRANSKY, OWNER,

Defendant-Appellee.

NO. 90-3906-III

MEMORANDUM

This suit arises out of the Plaintiff's purchase of a 1988 Champion motor home from an Illinois dealer, the defendant. Even before accepting delivery the plaintiff was dissatisfied with the vehicle. Nevertheless she accepted the delivery and brought it to Tennessee. The plaintiff obtained a Tennessee title without noting a security interest. She continued to be dissatisfied. The defendant offered to return the down payment and retake

the vehicle, but the plaintiff did not respond. The defendant filed suit in General Sessions Court to obtain the vehicle, and the plaintiff counterclaimed for the same relied she seeks in this Court. The General Sessions Court ruled in favor of the defendant. The plaintiff did not appeal.

Instead, the plaintiff filed a pleading in this Court denominated "APPEAL, COMPLAINT AND APPLICATION FOR INJUNCTIVE RELIEF." She makes the same complaint here she made in General Sessions Court.

This suit by the plaintiff is barred by the doctrine of res judicata. The case has already been tried in General Sessions Court. Moveover, the plaintiff cannot sustain her claim on the merits.

The case is governed by Illinois law, but the plaintiff has not established the Illinois law which this Court should apply. Some of the characteristics of the Van about which she now complains she knew of when she purchased the Van, but she

accepted delivery anyway. She signed a contract which excludes warranties she now claims apply to the sale. Then, she did not respond to the seller's offer to rescind the entire transaction.

Just as the plaintiff's claim is barred by res judicata, so is the defendant's counterclaim. If the defendant has expenses in connection with this suit, his remedy may be pursuant to Rule 11, T.R.C.P.

The plaintiff swore under oath that she is a pauper when she filled this suit, but she is no pauper. She earns $2,100 per month, owns a Mercedes automobile, and owns a house in which she has represented that she has $40,000 equity. She has over $2,000 cash in the bank. She and her legal advisor, her father who is not a licensed attorney, acknowledged that she is no pauper. She must pay the court costs.

ROBERT S. BRANDT

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE 20th JUDICIAL DISTRICT, DAVIDSON COUNTY, PART THREE

IN THE MATTER OF:

CELINA M. CLAY,

Plaintiff-Appellant,

v.

BARRINGTON MOTOR SALES, INC.,
RONALD BRANSKY, OWNER,

Defendant-Appellee.

ORDER

Both parties have filed post trial motions. The plaintiff has filed three motions entitled: MOTION TO AMEND COMPLAINT TO CONFORM TO EVIDENCE AND MOTION IN OPPOSITION TO COUNTER-DEFENDANT'S MOTION TO ASSESS EXPENSES TO COUNTER-PLAINTIFF." The plaintiff has not established grounds for her motions, and they are denied.

The defendant has moved pursuant to Rule 11, T.R.C.P. for reasonable expenses. Rule 11 was

violated. This is a frivolous abusive suit. The case had already been tried in another court. The case had no validity on the merits. The defendant is entitled to Rule 11 relief, but not in the amount sought however.

The defendant did not seek dismissal of this groundless suit. Instead, it counterclaimed for damages and went to trial on the merits. Some of the expenses incurred in defending the case and expenses incurred in prosecuting the counterclaim should be chargeable to the defendant.

The Court awards a judgment against the plaintiff in the amount of $2,000. The plaintiff's motions are denied. The Defendant's counsel should submit the order.

ROBERT S. BRANDT

APPENDIX D

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE 20th JUDICIAL DISTRICT, DAVIDSON COUNTY, PART THREE

IN THE MATTER OF:

CELINA M. CLAY,

Plaintiff-Appellant,

v.

BARRINGTON MOTOR SALES, INC.,
RONALD BRANSKY, OWNER,

Defendant-Appellee.

ORDER

This matter came to be heard on the 18th day of January, 1991, before the Honorable Chancellor Robert S. Brandt, upon the Plaintiff's Motion to Amend Counterclaim To An Additional $20,000.00 and the itemization of other matters cited in said complaint, and it appearing to the court, after hearing arguments of Counsels, that the motion be treated as a Motion for Leave to Amend, and that said motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Leave to Amend is hereby granted, and the Plaintiff has 15 days from the date of this Order to amend and file her amended complaint.

Robert S. Brandt

Appendix E

IN THE MATTER OF:

CELINA M. CLAY,

Plaintiff-Appellant,

v.
BARRINGTON MOTOR SALES, INC.,
RONALD BRANSKY, OWNER,

Defendant-Appellee.

Davidson Chancery No. 90-3906-III

Appeal No. 01-A-01-9110-CH-00375

ORDER

It appearing that no party has timely requested oral argument, this appeal is taken under consideration upon the record and briefs.

Enter 12-4-91

HENRY F. TODD, PRESIDING JUDGE

CERTIFICATE OF SERVICE

I certify that an exact copy of the foregoing was mailed this 22 day of July, 1992 to Harold Collins, 4800 Charlotte Ave., Nashville, TN 37209.

Celina M Clay